

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

UNITED STATES OF AMERICA,
Plaintiff,
vs.
BRITTANY GRAHAM,
Defendant.

No. 23-CR-3014-LTS-KEM

REPORT AND RECOMMENDATION

Defendant Brittany Graham is charged with possession of a firearm by an unlawful drug user in violation of 18 U.S.C. § 922(g)(3) (Doc. 3) and asks this court to dismiss the indictment by finding the charge unconstitutional under the Second Amendment of the United States Constitution and *New York State Rifle and Pistol Ass'n, Inc. v. Bruen*.¹ (Doc. 30). I previously denied Graham's motion to extend the nontrial-motion deadline, noting that even if the deadline were extended, the Eighth Circuit has denied facial challenges to the constitutionality of 18 U.S.C. § 922(g)(3).² Doc. 33. In addition, Defendant filed a notice of intent to plead guilty, and a plea hearing is scheduled for June 3, 2024. Docs. 34, 35.

I respectfully recommend that the district judge **DENY** Graham's motion to dismiss (Doc. 30) as untimely, or alternatively deny the motion as moot after Defendant pleads guilty.³

¹ 597 U.S. 1 (2022).

² See *United States v. Veasley*, 98 F.4th 906, 908, 918 (8th Cir. 2024) (relying on *United States v. Seay*, 620 F.3d 919, 925 (8th Cir. 2010), and “add[ing] to its analysis by doing the historical work and ‘analogical reasoning’ that *Bruen* requires”).

³ See *United States v. Baumhoefer*, 972 F.2d 918, 920 (8th Cir. 1992) (holding that defendant’s “motion to dismiss the tax indictment was rendered moot when he pleaded guilty to one count of that indictment”).

Objections to this Report and Recommendation must be filed within fourteen days of service in accordance with 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b). Objections must specify the parts of the Report and Recommendation to which objections are made, as well as the parts of the record forming the basis for the objections.⁴ Failure to object to the Report and Recommendation waives the right to *de novo* review by the district court of any portion of the Report and Recommendation, as well as the right to appeal from the findings of fact contained therein.⁵

DONE AND ENTERED on May 13, 2024.



Kelly K.E. Mahoney
Chief United States Magistrate Judge
Northern District of Iowa

⁴ Fed. R. Civ. P. 72.

⁵ See *United States v. Wise*, 588 F.3d 531, 537 n.5 (8th Cir. 2009).